

BEFORE

THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2014-346-WS - ORDER NO. 2021-_____

IN RE:	Application of Daufuskie Island Utility)	
	Company, Inc. for Approval of an Increase)	CONSENT ORDER
	for Water and Sewer Rates, Terms and)	APPROVING
	Conditions)	SETTLEMENT

The Applicant herein, Daufuskie Island Utility Company, Inc. (“DIUC”), along with the South Carolina Office of Regulatory Staff (“ORS”) and Haig Point Club and Community Association, Inc. (“HPCCA”), Melrose Property Owner’s Association, Inc. (“MPOA”), and Bloody Point Property Owner’s Association (“BPPOA”) (collectively the “POAs” or “Intervenors”) (all hereinafter collectively referred to as the “Parties” or sometimes individually as a “Party”), have informed this Commission that they have entered into a Settlement Agreement.¹ The Parties now seek this Commission’s approval of the Settlement Agreement.

SUMMARY OF CASE PROCEEDINGS

DIUC’s initial application requested rate adjustments that would render a 108.9% increase in revenue over the revenue generated by the then existing rates authorized pursuant to DIUC’s last rate adjustment from a 2012 application. *See* Rehearing Transcript at 80 and Notice of Filing at 1. The additional revenue requested by DIUC was \$1,182,301, which would increase DIUC’s

¹ The identity of the parties, the procedural history, the issues resolved to date, and the issues outstanding are all well documented in the record. The two opinions issued by the Supreme Court in this matter are included in the Commission record. They may also be found at *DIUC v. S.C. Office of Reg. Staff*, 420 S.C. 305, 803 S.E.2d 280 (2017) (hereinafter “*DIUC I*”) and *DIUC v. S.C. Office Reg. Staff*, 427 S.C. 458, 832 S.E.2d 572 (2019), *reh'g denied* (Sept. 27, 2019) (hereinafter “*DIUC II*”).

total adjusted revenue to \$2,267,722.

This Commission's first Order permitted a 43% increase in DIUC's rates. *See* Order No. 2015-846, Order Approving Settlement (December 8, 2015). DIUC appealed Order 2015-846 and the Supreme Court reversed and remanded the matter "to the Commission for a de novo hearing." *DIUC I*, 420 S.C. at 320, 803 S.E.2d at 288. At rehearing in December 2017, DIUC provided testimony that the "current economic realities following remand" had changed and that DIUC actually required an \$1,349,467 increase to properly operate, as opposed to the \$1,182,301 in the pending application. See Rehearing Transcript at 79. However, to keep the final adjusted revenues and the corresponding underlying rates within the application's original 108.9% revenue increase that was noticed to the customers in accordance with the 2014 historical test year data, DIUC proposed to leave outstanding a portion of its rate case expenses beyond those that could be included within a 108.9% increase. *See* DIUC's Supplemental Brief Regarding Second Remand at 15.

After conducting rehearing, the Commission entered its rate Directive on December 20, 2017, and its full Order on Rehearing (Order No. 2018-68, January 31, 2018). The Directive and Order on Rehearing permitted DIUC an \$950,178 overall rate increase that was designed to produce combined annual revenues of \$2,023,759, comprised of water revenues of \$1,020,831 and wastewater revenues of \$1,002,928. DIUC appealed Order 2018-68 and the Supreme Court again reversed this Commission. *See generally DIUC II*, 427 S.C. 458, 832 S.E.2d 572 (2019), *reh'g denied* (Sept. 27, 2019).

DIUC requested on this second remand that the Commission approve an additional \$243,955 increase over the \$2,023,759 revenues allowed with the \$950,178 increase from Order 2018-68. The proposed increase, added to the previously approved and implemented increase

from Order 2018-68, would produce combined annual revenues of \$2,267,714. See Settlement Agreement at Exhibit 1, Settlement Rates and Revenues (Billing Analysis) and Settlement Agreement at Exhibit 2, Operating Statement (Water and Wastewater Combined) (illustrating the resultant operating experience based on the application's 2014 test year). By adopting the Settlement Agreement, the Commission would be approving these rates, referred to in the Settlement Agreement as the 2021 Rates.

THE SETTLEMENT AGREEMENT

The Parties have submitted a Settlement Agreement indicating the Parties have agreed as follows:

1. Rate Case Expenses: In addition to the \$272,382 of rate case expenses previously recommended for recovery by ORS, approved by the Commission in Order No. 2018-68, and currently reflected in rates charged to customers, the Parties agree to recovery of \$542,978 for Guastella Associates' ("GA") rate case expenses incurred by DIUC through September 30, 2017, and supplemental legal rate case expenses of \$95,430, with both amounts to be amortized over a three (3) year period. DIUC reports it has also incurred additional rate case expenses, both GA rate case expenses and legal rate case expenses, in conjunction with this rate proceeding. The parties agree DIUC will delay seeking recovery of these additional rate case expenses until its next rate filing, and the Parties agree to reserve their positions as to DIUC's recovery of these additional rate case expenses for consideration in DIUC's next rate case.

2. Rate Base / Utility Plant in Service: DIUC's application included \$8,139,260 of reported used and useful facilities included in Utility Plant in Service. Commission Orders 2015-846 and 2018-68 both reduced that amount by \$699,361. The Parties agree DIUC will delay seeking recovery of the corresponding \$699,361 until its next rate filing, and the Parties agree to

reserve their positions as to the \$699,361 reduction to Utility Plant in Service for consideration in DIUC's next rate case.

3. Reparations: DIUC asserts the temporary rates permitted by Order 2015-846's rate increase of 43%, which was mitigated but not corrected by Order 2018-68's further changes permitting a rate increase of 88.5%, were confiscatory. DIUC seeks reparations to recoup through a surcharge its shortfall in revenues and return with interest accumulating until the surcharge becomes effective, back to its January 2018 billing for service provided for the last quarter of 2017, until its first billing following a final decision on the recoupment issue. DIUC also seeks reparations to recoup through a surcharge the credit/refund made in its January 2018 billing for the difference between the 88.5% increase and the 108.9% increase that had been in effect during the first appeal with interest accumulating until the surcharge becomes effective. ORS and the Intervenors disagree. ORS asserts that because DIUC chose not to put its requested (applied for) rates into effect under bond pending resolution of the second appeal, it cannot collect revenues from its customers going forward which it claims to have lost as a result of its decision to not post a bond while the current appeal was pending. Moreover, ORS also asserts that DIUC is prohibited from charging its customers any interest on any alleged lost revenues because rate-making is a prospective rather than a retroactive process. It is ORS's position that retroactive ratemaking is prohibited based on the principle that customers who use service provided by a utility should pay for its production rather than requiring future customers to pay for past use. S.C. Elec. & Gas Co. v. Pub. Serv. Comm'n, 275 S.C. 487, 272 S.E.2d 793 (1980). The Settlement Agreement contains a procedure whereby after this Commission's decision regarding the proposed Settlement Agreement, the parties can brief the matter to the Commission for its further determination in this case. The Settlement Agreement provides for notice and a briefing schedule on this issue. The

Parties agree that this proceeding, Docket No. 2014-346-WS, will remain open until the issue of reparations is fully adjudicated, including any appeals and final order(s) on remand, if necessary. The Parties reserve their right to appeal the Commission's decision regarding this issue.

4. The Public Interest: In addition to these three issues, the parties' Settlement Agreement includes an affirmation by ORS that the Settlement Agreement reached among the Parties serves the public interest as defined in S.C. Code Ann. § 58-4-10(B).

5. Commission Approval: The Parties agree that the Settlement Agreement does not preclude each party from advancing its respective positions in the event that the Commission does not approve the Settlement Agreement.

6. Importance of Timing: The Parties agree to cooperate in seeking approval of the Settlement Agreement as soon as is practical, jointly requesting expedited review and a decision of the Commission by Order prior to March 1, 2021, that provides DIUC may implement the 2021 Rates for services beginning March 1, 2021, and DIUC may include the same in its April 1, 2021, quarterly billing.

7. Settlement Testimony: In support of the request for approval, DIUC filed a copy of the Settlement Agreement and the Verified Settlement Testimony of John F. Guastella and ORS filed the Verified Testimony of Dawn M. Hipp.

CONCLUSION

Following remand of this matter pursuant to *DIUC II*, 427 S.C. 458, 832 S.E.2d 572 (2019), *reh'g denied* (Sept. 27, 2019), the Parties have participated in multiple hearings before this Commission. Having considered the matters raised in those hearings, the terms of the proposed Settlement Agreement, and the aforementioned testimony in support of the Settlement Agreement, the Commission finds a settlement hearing is not necessary. Based upon the Parties' submissions,

the representations included within the Settlement Agreement, and the record as a whole, the Commission finds the Settlement Agreement is just, fair, and reasonable, it is in accord with applicable law and regulatory policy, and it is in the public interest.

The Settlement Agreement is hereby approved, effective March 1, 2021. Accordingly, DIUC may implement the 2021 Rates, (as defined in the Settlement Agreement and reflected in the attachments thereto) for services beginning March 1, 2021, and DIUC may include the same in its April 1, 2021, quarterly billing.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Vice Chairman

WE CONSENT.

Representing and binding Daufuskie Island Utility Company, Inc.

/s/ Thomas P. Gressette, Jr.

Thomas P. Gressette, Jr.

2-19-21

Date

WE CONSENT.

Representing and binding the Office of Regulatory Staff of South Carolina

/s/ Jeffrey M. Nelson

Jeffrey M. Nelson

Andrew Bateman

2-19-21

Date

WE CONSENT.

Representing and binding Haig Point Club and Community Association, Inc. ("HPCCA"), Melrose Property Owner's Association, Inc. ("MPOA"), and Bloody Point Property Owner's Association ("BPPOA"), collectively referred to as the "POAs" or "Intervenors"

/s/ John J. Pringle, Jr.

John J. Pringle, Jr.

John Beach

2-19-21

Date